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SENATE BILL 302

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO HEALTH CARE; AMENDING SECTIONS OF THE DENTAL HEALTH CARE ACT; EXPANDING THE SCOPE OF PRACTICE FOR CERTIFIED EXPANDED-FUNCTION DENTAL AUXILIARIES; AMENDING DENTAL LICENSURE EXAMINATION REQUIREMENTS; ALLOWING UNIVERSITY OF NEW MEXICO DENTAL RESIDENTS TO OBTAIN TEMPORARY LICENSURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-5A-3 NMSA 1978 (being Laws 1994, Chapter 55, Section 3, as amended) is amended to read:

"61-5A-3. DEFINITIONS.--As used in the Dental Health Care Act:

A. "assessment" means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment;

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1 B. "board" means the New Mexico board of dental
2 health care;

3 C. "certified dental assistant" means an individual
4 certified by the dental [~~assistant~~] assisting national board;

5 D. "collaborative dental hygiene practice" means a
6 New Mexico licensed dental hygienist practicing according to
7 Subsections D and E of Section 61-5A-4 NMSA 1978;

8 E. "committee" means the New Mexico dental
9 hygienists committee;

10 F. "consulting dentist" means a dentist who has
11 entered into an approved agreement to provide consultation and
12 create protocols with a collaborating dental hygienist and,
13 when required, to provide diagnosis and authorization for
14 services, in accordance with the rules of the board and the
15 committee;

16 G. "dental assistant certified in expanded
17 functions" means a dental assistant who meets specific
18 qualifications set forth by rule of the board;

19 H. "dental hygienist" means an individual who has
20 graduated and received a degree from a dental hygiene
21 educational program accredited by the [~~joint~~] commission on
22 dental accreditation, which provides a minimum of two academic
23 years of dental hygiene curriculum and is an institution of
24 higher education and, except as the context otherwise requires,
25 who holds a license to practice dental hygiene in New Mexico;

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1 I. "dental laboratory" means any place where dental
2 restorative, prosthetic, cosmetic and therapeutic devices or
3 orthodontic appliances are fabricated, altered or repaired by
4 one or more persons under the orders and authorization of a
5 dentist;

6 J. "dental technician" means an individual, other
7 than a licensed dentist, who fabricates, alters, repairs or
8 assists in the fabrication, alteration or repair of dental
9 restorative, prosthetic, cosmetic and therapeutic devices or
10 orthodontic appliances under the orders and authorization of a
11 dentist;

12 K. "dentist" means an individual who has graduated
13 and received a degree from a school of dentistry that is
14 accredited by the [~~joint~~] commission on dental accreditation
15 and, except as the context otherwise requires, who holds a
16 license to practice dentistry in New Mexico;

17 L. "direct supervision" means the process under
18 which an act is performed:

19 (1) when a licensed dentist is physically
20 present in the office of the licensed dentist throughout the
21 performance of the act;

22 (2) pursuant to the licensed dentist's order,
23 control and full professional responsibility; and

24 (3) when the licensed dentist checks and
25 approves the act performed before the patient upon whom the act

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1 is performed departs the office of the licensed dentist;

2 M. "expanded-function dental auxiliary" means a
3 dental assistant or dental hygienist who has met the criteria
4 established by the board, with input from the committee, for an
5 expanded-function scope of practice;

6 [~~E-~~] N. "general supervision" means the
7 authorization by a dentist of the procedures to be used by a
8 dental hygienist, dental assistant or dental student and the
9 execution of the procedures in accordance with a dentist's
10 diagnosis and treatment plan at a time the dentist is not
11 physically present and in facilities as designated by rule of
12 the board;

13 [~~M-~~] O. "indirect supervision" means that a
14 dentist, or in certain settings a dental hygienist or dental
15 assistant certified in expanded functions, is present in the
16 treatment facility while authorized treatments are being
17 performed by a dental hygienist, dental assistant or dental
18 student; and

19 [~~N-~~] P. "non-dentist owner" means an individual not
20 licensed as a dentist in New Mexico or a corporate entity not
21 owned by a majority interest of a New Mexico licensed dentist
22 that employs or contracts with a dentist or dental hygienist to
23 provide dental or dental hygiene services."

24 Section 2. A new section of the Dental Health Care Act is
25 enacted to read:

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1 "[NEW MATERIAL] EXPANDED-FUNCTION DENTAL AUXILIARY--
2 CERTIFICATION.--

3 A. The board shall establish academic standards and
4 criteria for certifying dental assistants and dental hygienists
5 as eligible to practice as expanded-function dental
6 auxiliaries.

7 B. In accordance with the State Rules Act, the
8 board shall promulgate and file all rules and regulations
9 relating to the certification of expanded-function dental
10 auxiliaries."

11 Section 3. Section 61-5A-4 NMSA 1978 (being Laws 1994,
12 Chapter 55, Section 4, as amended) is amended to read:

13 "61-5A-4. SCOPE OF PRACTICE.--

14 A. As used in the Dental Health Care Act, "practice
15 of dentistry" means:

16 (1) the diagnosis, treatment, correction,
17 change, relief, prevention, prescription of remedy, surgical
18 operation and adjunctive treatment for any disease, pain,
19 deformity, deficiency, injury, defect, lesion or physical
20 condition involving both the functional and aesthetic aspects
21 of the teeth, gingivae, jaws and adjacent hard and soft tissue
22 of the oral and maxillofacial regions, including the
23 prescription or administration of any drug, medicine, biologic,
24 apparatus, brace, anesthetic or other therapeutic or diagnostic
25 substance or technique by an individual or the individual's

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1 agent or employee gratuitously or for any fee, reward,
2 emolument or any other form of compensation whether direct or
3 indirect;

4 (2) representation of an ability or
5 willingness to do any act mentioned in Paragraph (1) of this
6 subsection;

7 (3) the review of dental insurance claims for
8 therapeutic appropriateness of treatment, including but not
9 limited to the interpretation of radiographs, photographs,
10 models, periodontal records and narratives;

11 (4) the offering of advice or authoritative
12 comment regarding the appropriateness of dental therapies, the
13 need for recommended treatment or the efficacy of specific
14 treatment modalities for other than the purpose of consultation
15 to another dentist; or

16 (5) with specific reference to the teeth,
17 gingivae, jaws or adjacent hard or soft tissues of the oral and
18 maxillofacial region in living persons, to propose, agree or
19 attempt to do or make an examination or give an estimate of
20 cost with intent to, or undertaking to:

21 (a) perform a physical evaluation of a
22 patient in an office or in a hospital, clinic or other medical
23 or dental facility prior to, incident to and appropriate to the
24 performance of any dental services or oral or maxillofacial
25 surgery;

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1 (b) perform surgery, an extraction or
2 any other operation or to administer an anesthetic in
3 connection therewith;

4 (c) diagnose or treat a condition,
5 disease, pain, deformity, deficiency, injury, lesion or other
6 physical condition;

7 (d) correct a malposition;

8 (e) treat a fracture;

9 (f) remove calcareous deposits;

10 (g) replace missing anatomy with an
11 artificial substitute;

12 (h) construct, make, furnish, supply,
13 reproduce, alter or repair an artificial substitute or
14 restorative or corrective appliance or place an artificial
15 substitute or restorative or corrective appliance in the mouth
16 or attempt to adjust it;

17 (i) give interpretations or readings of
18 dental radiographs; or

19 (j) do any other remedial, corrective or
20 restorative work.

21 B. As used in the Dental Health Care Act, "the
22 practice of dental hygiene" means the application of the
23 science of the prevention and treatment of oral disease through
24 the provision of educational, assessment, preventive, clinical
25 and other therapeutic services under the general supervision of

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1 a dentist. "Dental hygiene" includes:

2 (1) prophylaxis, which is the treatment of
3 human teeth by removing from their surface calcareous deposits
4 and stain, removing accumulated accretions and polishing the
5 surfaces of the teeth;

6 (2) removing diseased crevicular tissue;

7 (3) the application of pit and fissure
8 sealants without mechanical alteration of the tooth, fluorides
9 and other topical therapeutic and preventive agents;

10 (4) exposing and referring to oral
11 radiographs;

12 (5) screening to identify indications of oral
13 abnormalities;

14 (6) assessment of periodontal conditions; and

15 (7) such other closely related services as
16 permitted by the rules of the committee and the board.

17 C. In addition to performing dental hygiene as
18 defined in Subsection B of this section, a dental hygienist may
19 apply preventive topical fluorides and remineralization agents
20 without supervision in public and community medical facilities,
21 schools, hospitals, long-term care facilities and such other
22 settings as the committee may determine by rule ratified by the
23 board, so long as the dental hygienist's license is not
24 restricted pursuant to the Impaired Dentists and Dental
25 Hygienists Act.

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1 D. In addition to performing dental hygiene as
2 defined in Subsection B of this section, dental hygienists who
3 have met the criteria as the committee shall establish and the
4 board shall ratify may administer local anesthesia under
5 indirect supervision of a dentist.

6 E. A New Mexico licensed dental hygienist may be
7 certified for collaborative dental hygiene practice in
8 accordance with the educational and experience criteria
9 established collaboratively by the committee and the board.

10 F. An expanded-function dental auxiliary may
11 perform the following procedures only under direct supervision:

12 (1) placing and shaping direct restorations;

13 (2) taking final impressions;

14 (3) performing ultrasonic scaling of
15 supragingival calculus; and

16 (4) selecting, fitting and cementing stainless
17 steel crowns on deciduous teeth only.

18 G. An expanded-function dental auxiliary may re-
19 cement temporary or permanent crowns with temporary cement
20 under general supervision in a situation that a licensed
21 dentist deems to be an emergency.

22 ~~[F.]~~ H. For the purpose of this section,
23 "collaborative dental hygiene practice" means the application
24 of the science of the prevention and treatment of oral disease
25 through the provision of educational, assessment, preventive,

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1 clinical and other therapeutic services as specified in
2 Subsection B of this section in a cooperative working
3 relationship with a consulting dentist, but without general
4 supervision as set forth by the rules established and approved
5 by both the board and the committee."

6 Section 4. Section 61-5A-12 NMSA 1978 (being Laws 1994,
7 Chapter 55, Section 12, as amended) is amended to read:

8 "61-5A-12. DENTISTS--REQUIREMENTS FOR LICENSURE--
9 SPECIALTY LICENSE.--

10 A. All applicants for licensure as a dentist shall
11 have graduated and received a degree from a school of dentistry
12 that is accredited by the [~~joint~~] commission on dental
13 accreditation and have passed the written portion of the dental
14 examination administered by the joint commission on national
15 dental examinations of the American dental association or, if
16 the test is not available, another written examination
17 determined by the board.

18 B. Applicants for a general license to practice
19 dentistry by examination shall be required, in addition to the
20 requirements set forth in Subsection A of this section, to pass
21 a test covering the laws and rules for the practice of
22 dentistry in New Mexico. Written examinations shall be
23 supplemented by the board or its agents by administering to
24 each applicant a practical or clinical examination that
25 reasonably tests the applicant's qualifications to practice

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1 general dentistry, including examinations offered by the
2 central regional dental testing service, north east regional
3 board, southern regional testing agency or western regional
4 examining board or any other comparable clinical test the board
5 approves. Upon an applicant passing the written and clinical
6 examinations and payment in advance of the necessary fees, the
7 board shall issue a license to practice dentistry.

8 C. The board may issue a general license to
9 practice dentistry, by credentials, without a practical or
10 clinical examination to an applicant who is duly licensed by a
11 clinical examination as a dentist under the laws of another
12 state or territory of the United States; provided that license
13 is active and that all dental licenses that an individual
14 possesses have been in good standing for five years prior to
15 application. The credentials must show that no dental board
16 actions have been taken during the five years prior to
17 application; that no proceedings are pending in any states in
18 which the applicant has had a license in the five years prior
19 to application; and that a review of public records, the
20 national [~~practitioners~~] practitioner data bank or other
21 nationally recognized data resources that record actions
22 against a dentist in the United States does not reveal any
23 activities or unacquitted civil or criminal charges that could
24 reasonably be construed to constitute evidence of danger to
25 patients, including acts of moral turpitude.

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1 D. The board may issue a general license to
2 practice dentistry by credentials to an applicant who meets the
3 requirements, including payment of appropriate fees and the
4 passing of an examination covering the laws and rules of the
5 practice of dentistry in New Mexico, of the Dental Health Care
6 Act and rules promulgated pursuant to that act, and who:

7 (1) has maintained a uniform service practice
8 in the United States military or public health service for
9 three years immediately preceding the application; or

10 (2) is duly licensed by examination as a
11 dentist pursuant to the laws of another state or territory of
12 the United States.

13 E. The board may issue a specialty license by
14 examination to an applicant who has passed a clinical and
15 written examination given by the board or its examining agents
16 that covers the applicant's specialty. The applicant shall
17 have a postgraduate degree or certificate from an accredited
18 dental college, school of dentistry of a university or other
19 residency program that is accredited by the [~~joint~~] commission
20 on dental accreditation in one of the specialty areas of
21 dentistry recognized by the American dental association. The
22 applicant shall also meet all other requirements as established
23 by rules of the board, which shall include an examination
24 covering the laws and rules of the practice of dentistry in New
25 Mexico. A specialty license limits the licensee to practice

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1 only in that specialty area.

2 F. The board may issue a specialty license, by
3 credentials, without a practical or clinical examination to an
4 applicant who is duly licensed by a clinical examination as a
5 dentist under the laws of another state or territory of the
6 United States and who has a postgraduate degree or certificate
7 from an accredited dental college, school of dentistry of a
8 university or other residency program that is accredited by the
9 [~~joint~~] commission on dental accreditation in one of the
10 specialty areas of dentistry recognized by the American dental
11 association; provided that license is active and that all
12 dental licenses that an individual possesses have been in good
13 standing for five years prior to application. The credentials
14 must show that no dental board actions have been taken during
15 the five years prior to application; that no proceedings are
16 pending in any states in which the applicant has had a license
17 in the five years prior to application; and that a review of
18 public records, the national [~~practitioners~~] practitioner data
19 bank or other nationally recognized data resources that record
20 actions against a dentist in the United States does not reveal
21 any activities or unacquitted civil or criminal charges that
22 could reasonably be construed to constitute evidence of danger
23 to patients, including acts of moral turpitude. The applicant
24 shall also meet all other qualifications as deemed necessary by
25 rules of the board, which shall include an examination covering

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1 the laws and rules of the practice of dentistry in New Mexico.
2 A specialty license limits the licensee to practice only in
3 that specialty area."

4 Section 5. Section 61-5A-14 NMSA 1978 (being Laws 1994,
5 Chapter 55, Section 14, as amended) is amended to read:

6 "61-5A-14. TEMPORARY LICENSURE.--The board or the
7 committee may issue a temporary license to practice dentistry
8 or dental hygiene to ~~[any]~~ an applicant who is licensed to
9 practice dentistry or dental hygiene in another state or
10 territory of the United States, who is enrolled as a dental
11 resident at the university of New Mexico and who is otherwise
12 qualified to practice dentistry or dental hygiene in this
13 state. The following provisions shall apply:

14 A. the applicant shall hold a valid license in good
15 standing in another state or territory of the United States or
16 shall be enrolled as a dental resident at the university of New
17 Mexico;

18 B. the applicant shall practice dentistry or dental
19 hygiene under the sponsorship of or in association with a
20 licensed New Mexico dentist or dental hygienist;

21 C. the temporary license may be issued for those
22 activities as stipulated by the board or committee in the rules
23 of the board. It may be issued upon written application of the
24 applicant when accompanied by such proof of qualifications as
25 the secretary-treasurer of the board or committee, in ~~[his]~~ the

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1 secretary-treasurer's discretion, may require. Temporary
2 licensees shall engage in only those activities specified on
3 the temporary license for the time designated, and the
4 temporary license shall identify the licensed New Mexico
5 dentist or dental hygienist who will sponsor or associate with
6 the applicant during the time the applicant practices dentistry
7 or dental hygiene in New Mexico;

8 D. the sponsoring or associating dentist or dental
9 hygienist shall submit an affidavit attesting to the
10 qualifications of the applicant and the activities the
11 applicant will perform;

12 E. the temporary license shall be issued for a
13 period not to exceed twelve months and may be renewed upon
14 application and payment of required fees;

15 F. the application for a temporary license under
16 this section shall be accompanied by a license fee; and

17 G. the temporary licensee shall be required to
18 comply with the Dental Health Care Act and all rules
19 promulgated pursuant [~~thereto~~] to that act."